IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6992 of 2003
With
CIVIL APPLICATION No. 3632 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

P.K.THAKKAR CONSTRUCTION PVT. LTD.

Versus

TEXTILE TRADERS CO.OP. BANK LIMITED

Appearance:

1. Special Civil Application No. 6992 of 2003
MR NANDLAL THAKKAR for Petitioner No. 1-4
MR KS JHAVERI for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 23/06/2003

ORAL JUDGEMENT

The present Special Civil Application is filed against the order dated 17.5.2003 passed by the Gujarat State Cooperative Tribunal rejecting the application for staying the proceedings in Lavad Case No. 985 of 2003 pending before Registrar, Board of Nominees, Ahmedabad.

2. The brief facts, giving rise to the present petition are that the present respondent Bank has filed the Lavad Case No. 985 of 2003 before the Registrar, Board of Nominees, Ahmedabad, against the present petitioners for recovery of an amount of Rs. 42,75,450.99 Ps. The petitioners have filed an application Exh. 15 before Board of Nominees raising preliminary issue regarding membership. The said application was rejected by the Board of Nominees, vide order dated 30.4.2003. The petitioners, being aggrieved by and dissatisfied with the said order, preferred Revision Application before Gujarat State Cooperative Tribunal, Ahmedabad. The Tribunal, vide its order dated 17.5.2003, rejected the application for interim relief for stay of proceedings before the Board of Nominees and ordered the Revision to be heard by the Division Bench of the Tribunal.

3. It is this order which is under challenge in this petition before this Court. This Court has passed an order on 23.5.2003 issuing notice making it returnable today i.e. 23.6.2003. It was further observed in the said order that in view of the earlier petition nos. 7339/91 and 7389/91 which are already admitted by this Court, interim relief in terms of para 15(D) till then was granted by this Court. On service of the notice, the respondent Bank has filed Civil Application under Article 226 (3) of the Constitution of India for vacating the interim relief. The hearing of this application was fixed earlier, however, it could not be taken up, and hence the same is taken up for hearing today along with the present Special Civil Application.

4. Mr. N.R. Thakkar, the learned advocate appearing for the petitioners submits that two petitions referred to in the order dated 23.5.2003 involving the identical issue are admitted by this Court and this matter should also be heard along with those two matters and till all these matters are heard and decided, the interim relief granted by this Court should be continued. Mr. Thakkar has further submitted that challenge to the provision of Section 96(1)(c) of the Gujarat Cooperative Societies Act was made before this Court in the case of Mahavir Cotton Co., Surendranagar vs. Saurashtra Co-op. Spinning Mills Ltd., Limbdi 1995(2) GLR 1394, wherein this Court has taken the view that "No restrictions have been prescribed under Sec. 46. Therefore, the transactions of the society with non-members are not subject to any restriction under Sec. 46. In absence of any restriction which would attract clause (c) of Sec. 96(1), it is not possible to hold that Sec.96(1)(c) would

be attracted." He has further submitted that while deciding the issue, this Court has taken note of earlier decision in the case of Rasiklal Patel v. Kailasgauri Ramanlal Mehta, (1971) XII GLR 355, wherein this Court has allowed the petition by declaring the clauses (c), (d) and (e) and the words "any past or present agent" and "deceased agent" in clause (a) of Sec. 96(1) as also Explanation II, at the end of Sec. 96 are violative of Art. 14 of the Constitution and are, therefore, null and void. On the basis of these two authorities, Mr. Thakkar has submitted that since the very issue is to be decided by the Board of Nominees and even by the Tribunal before whom the Revision Application is pending and when petitions involving identical issues are pending before this Court the interim relief granted by this Court on 23.5.2003 should be continued.

5. Mr. Thakkar has further submitted that in the case of Nagji Uka vs. Administrator of Sakedi Agri.Co-op. So. Ltd & Ors - XIV GLT 83, this Court has observed that "once the revision application was entertained by the State Government, according to justice, commonsense and sound judgment, the further proceedings ought to have been stayed, for, the revision application would become entirely infructuous unless interim relief is granted. It was open to the competent authority to take up the matter for very early hearing if it found that the circumstances of the case justified the same. However, to refuse interim relief after entertaining a revision application would be to deny a just relief to the litigant pending the hearing of the case. Discretion in the matter of grant of interim relief could not be said to have been judicially exercised by refusal of such relief." On the basis of this decision, Mr. Thakkar has submitted that the Tribunal has already admitted the revision application but the stay has not been granted and hence it is contrary to the law laid down by this Court in the above decision. He therefore submitted that this Court has rightly granted the ex-parte interim relief at the time when the notice was issued and the same should be continued. He has further submitted that the Tribunal should be directed to decide the revision application and till the revision application is decided the interim relief granted by this Court staying the further proceedings before the Board of Nominees, should be allowed to continue.

6. Mr. KS Jhaveri, the learned advocate appearing on behalf of the respondent-Bank and for the applicant in Civil Application No. 3632 of 2003 has submitted that

the present-petitioners had preferred an application, Exh. 15 before the Board of Nominees and the same was rejected by the Board of Nominees, against which the present petitioners have preferred Revision Application and the application for interim relief was rejected by order dated 17.5.2003. He has further submitted that by virtue of the interim relief granted by this Court, the proceedings before the Board of Nominees are stayed. He has further submitted that Special Civil Applications No. 7339 of 1991 and 7389 of 1991 are filed by the Bank and those petitions were admitted by this Court against the order passed by the Tribunal. The present petition is filed by the borrower and guarantor and not by the Bank. Mr. Zaveri has further submitted that the present petitioners were granted hypothecation loan by the respondent Bank. The petitioners were admitted as members of the Bank on 26.2.1997 and they have withdrawn the amount for the first time on 27.3.1997 and hence when the amount was withdrawn, the petitioners were members of the Bank, which confers the jurisdiction on the Board of Nominees to entertain the suit. He has further submitted that the Board of Nominees has not decided the suit preferred by the Bank and the petitioners can defend their case before the Board of Nominees, and therefore, it is in the interests of justice and fair play that the Board of Nominees may be allowed to proceed with the suit. He has further submitted that the present petition is filed against the concurrent view taken by both the authorities below and no interim relief is granted by any of the authorities. The suit is still to be proceeded with and the revision application is still pending before the Tribunal. He has further submitted that the judgments relied upon by the ld. advocate for the petitioners are not applicable to the facts of the present case, as in the first place, it is nobody's case that the petitioner's case would fall under Section 96(1)(c) of the Act as the said Section has been struck down. The whole issue centers around as to whether petitioners are members. The loan was sanctioned and allowed to be withdrawn on the premise that they are members. Secondly, it cannot be said that the Tribunal has not assigned any reason while refusing to grant interim relief. In this view of the matter, he has submitted that the present Special Civil Application should be rejected with costs.

7. I have heard the learned advocate, Mr. Thakkar appearing for the petitioner as well as the learned advocate, Mr. Jhaveri appearing for the respondent. On going through the order passed by the Tribunal, there is no dispute about the fact that the revision application

is still pending before the Tribunal and the Tribunal has given clear, cogent and convincing reasons for refusing to grant interim relief. This Court while deciding a petition under Article 227 of the Constitution of India cannot go into the aspect of sufficiency of reasons. It is sufficient to see that the order is not passed in laconic manner. While going through the order passed by the Tribunal, the Court is of the view that after discussing the issues raised before it, the Tribunal has taken the view which any prudent person can take, qua the interim relief is concerned. Other aspects which are raised in the revision application can be gone into at the time when the revision application is decided. I am however of the view that the very issue as to when the petitioners can be said to be members, either at the time when the application was made, membership was granted, the loan was sanctioned, or when the amount was actually withdrawn, can be looked into when the matter is finally disposed of. Expression of any opinion, at this stage, by this Court, would adversely affect the interests of the parties. Considering the facts and circumstances of the case, the Tribunal has not thought it fit to grant the interim relief. This Court, while exercising the powers under Article 227 of the Constitution of India, is not inclined to direct the Tribunal to grant the interim relief till the Revision Application is decided. I am further of the view that the decision of this Court in the case of Nagji Uka v. Administrator of Sakedi Agri.Co-op. Society Ltd. & Ors. (Supra) does not render any assistance to the petitioners as in that case, the quasi-judicial authority has not given any reason whatsoever, for not granting interim relief. Secondly, discretion exercised by the Tribunal in the present case, cannot be said to be capricious or perverse or ultra vires. Even otherwise, the present revision application is still not entertained by the Tribunal. It is ordered to be heard by the Division Bench of the Tribunal. Hence, the present Special Civil Application, which is filed against the interim order refusing to grant interim relief, cannot be entertained. This petition is, therefore, required to be rejected and it is accordingly rejected. Notice is discharged with no order as to costs. In view of the order passed in Special Civil Application, no order on the Civil Application No. 3632 of 2003.

8. However, since the petitioners have raised the issue of membership, the Tribunal is directed to decide the revision application as expeditiously as possible preferably within a period of two months from the date of receipt of writ of this Court or from the date of receipt

of certified copy of this order whichever is earlier. The interim relief granted by this Court, on 23.5.2003, is vacated. At this stage, Mr. Thakkar, learned advocate has requested this Court that the present order be stayed for a period of two weeks so as to enable him to take recourse to the remedies available to the petitioners under the law. Mr. Jhaveri has strongly objected to the request of Mr. Thakkar. However, looking to the facts and circumstances of the case, the request made by Mr. Thakkar is acceded to and the present order is stayed for a period of two weeks from today.

rmr. [K.A. Puj, J.]